

## RESOLUTION

25-235

No. \_\_\_\_\_

JUN 17 2025

Date of Adoption \_\_\_\_\_

Factual content certified by

Paul Harris, Interim Director, Recreation, Natural Resources &amp; Culture

Councilman/woman \_\_\_\_\_

presents the following Resolution:

SPONSORED BY: \_\_\_\_\_

**RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT TO WHITSONS FOOD SERVICE (BRONX), LLC FOR THE 2025 SUMMER FOOD SERVICE PROGRAM FOR THE DEPARTMENT OF RECREATION, NATURAL RESOURCES, AND CULTURE THIS CONTRACT SHALL BE AWARDED FROM JUNE 30, 2025, TO AUGUST 22, 2025, IN AN AMOUNT NOT TO EXCEED \$370,303.05 - BID2025-46**

WHEREAS, one (1) sealed bid was received on May 21, 2025, at 11:00 am, by the Purchasing Agent for the 2025 Summer Food Service Program for the Department of Recreation, Natural Resources and Culture from June 30, 2025, to August 22, 2025; and

WHEREAS, the sole bid of Whitsons Food Service (Bronx), LLC, 1800 Motor Parkway, Islandia, NY 11749 is made pursuant to advertisement, be and is hereby accepted, as the lowest and legally responsible bidder complying with the terms and specifications on file in the Division of Purchasing; and

WHEREAS, funds in an amount not to exceed \$370,303.05 have been certified to be available in the following grant account: G-FF-25-70-612B-299 (\$100,424.93), G-FF-25-70-612A-101 (\$17,409.56) and G-FF-26-70-612B-299 (\$252,468.56). The contract shall be awarded from June 30, 2025, to August 22, 2025.

NOW, THEREFORE, IT IS RESOLVED, by the City Council of the City of Trenton that the Mayor is hereby authorized to execute a contract to Whitsons Food Service (Bronx), LLC, 1800 Motor Parkway, Islandia, NY 11749 for the 2025 Summer Food Service Program from June 30, 2025, to August 22, 2025 in an amount not to exceed \$370,303.05; for the Department of Recreation, Natural Resources, and Culture for the said purposes in the manner prescribed by law.

MOTION: <u>FRISBY</u>						SECOND: <u>FELICIANO</u>											
	Aye	Nay	Abstain	Absent			Aye	Nay	Abstain	Absent				Aye	Nay	Abstain	Absent
EDWARDS	✓				FRISBY		✓				GONZALEZ		✓				
FELICIANO	✓				HARRISON		✓										
FIGUEROA KETTENBURG	✓				WILLIAMS		✓										

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on JUN 17 2025

President of Council

City Clerk

**A G R E E M E N T**  
**C I T Y O F T R E N T O N , N E W J E R S E Y**

**BID2025-46**

**RES. NO. 25-235**

**AWARDED TO**

**WHITSONS FOOD SERVICE (BRONX), LLC**

This Agreement, entered into this 17<sup>TH</sup> Day of JUNE, 2025 between the City of Trenton, a municipal corporation of the State of New Jersey, ('CITY') **319 EAST STATE STREET, TRENTON, NEW JERSEY 08608** and **WHITSONS FOOD SERVICE (BRONX), LLC, 1800 MOTOR PARKWAY, ISLANDIA, NEW YORK 11749** (Contractor"), witnesseth that:

**WHEREAS**, Contractor has bid, proposed or offered to furnish and deliver to the City the materials, supplies and/or goods to perform the services **IN AN AMOUNT NOT TO EXCEED \$370,303.05 FROM JUNE 30, 2025, TO AUGUST 22, 2025.**

**FIRST**, A. Contractor, under the penalty expressed in the bond hereinafter mentioned, will furnish, supply and deliver to the City of Trenton the following materials, supplies or services as authorized by:

**RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT TO WHITSONS  
FOOD SERVICE (BRONX), LLC FOR THE 2025 SUMMER FOOD SERVICE PROGRAM FOR THE  
DEPARTMENT OF RECREATION, NATURAL RESOURCES, AND CULTURE THIS CONTRACT  
SHALL BE AWARDED FROM JUNE 30, 2025, TO AUGUST 22, 2025, IN AN AMOUNT NOT TO  
EXCEED \$370,303.05 - BID2025-46**

B. The contract shall submit with contracts with the following:

**UPDATED CERTIFICATE OF INSURANCE WITH SIGNED CONTRACTS  
PERFORMANCE BOND REQUIRED – 10%**

Such performance by Contractor will be in strict accordance with the terms and conditions of the bid specifications, the bid response and the authorizing resolution, which are included above and is incorporated by reference. Additionally, Contractor will furnish good and ample security in a sum equal to the said contract price for the said articles and services.

**SECOND.** The City of Trenton will pay Contractor the total sum mentioned herein when the appropriate Department Director has executed a certification that the said articles or services have been furnished, delivered, and accepted in full conformity to the aforementioned specifications and offer or proposal.

**THIRD.** The City of Trenton reserves the right to order a greater or lesser quantity, not to exceed twenty-five percent, of any or all of the articles named in the said offer or proposal than is stated therein, and it is distinctly agreed between the said parties that the price quoted in the offer or proposal of Contractor shall be regarded as a standard of prices, and the total sum mentioned herein as the consideration of this contract shall not be regarded as limiting the right of the City of Trenton to order such greater or lesser quantity.

**FOURTH.** In the event of the failure of Contractor to deliver to the City of Trenton, such articles or perform such work or labor as described in such quantities as ordered at the time stated for such delivery by the City of Trenton, or in the event that such articles as are delivered or work and labor performed do not meet the specifications or standards, as established by the City of Trenton for such articles or acceptance of such work and labor, then such delivery shall be rejected by telephone or written notice to the Agent or address indicated by the Contractor and by simultaneous and like notice to his surety. Additionally, if Contractor or his surety does not cure the default within the time set by the said Agent on behalf of the City of Trenton, then the said Agent on behalf of the City, shall have the right to procure such services or purchase such articles in their place and stead in the open market as are needed for replacement, and from the best source available in the judgment of the said Agent and to charge the expense of such articles or work performed to Contractor and to deduct the amount thereof from any moneys due or to become due to Contractor by virtue of this agreement.

Provided, however, that the surety on the bond of Contractor for the faithful performance of this agreement shall be first notified of the necessity for such replacement and given the same time allowance for such replacement as is given Contractor.

FIFTH. This contract shall not be amended, assigned or subcontracted without the consent of the City of Trenton in writing (if the total compensation payable thereunder shall thereby exceed \$2,500.00, approval by Resolution of the Governing Body shall be required), and any breach of this convenient shall authorize the City of Trenton, by its said Agent, to declare this contract null and void and to refuse to make any further payments thereunder to Contractor.

SIXTH. In case of any conflict between the provisions of this agreement and of any of the provisions of the specifications, the latter shall govern and control.

Applicable for Public Construction Contracts Only: "Dispute Resolution Procedures (NJSA 40A:11-50). Disputes arising under this contract shall be subject to mediation or non-binding arbitration at the sole discretion of the City of Trenton, before a construction industry mediator or arbitrator or panels thereof. The City of Trenton shall have the right to select a third party to mediate any disputes arising under this agreement and the mediation shall be conducted informally in a manner decided upon by the mediator".

SEVENTH. Contractor hereby agrees to pay all workmen as a minimum the prevailing wages rate in accordance with Chapter 150 of the New Jersey Laws of 1963, Prevailing Wages on Public Contracts and U.S. Department of Labor Wage Rates with the higher rate for any given occupation being the governing rate, and N.J.S.A. 10:2-1 et seq., prohibiting discrimination in employment on public contracts.

EIGHTH. During the performance of this contract, the contractor agrees as follows:

a. CONTRACTOR or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, or sex. CONTRACTOR will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

b. CONTRACTOR or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

c. CONTRACTOR or subcontractor where applicable, will send to each labor union

or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of CONTRACTOR's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

d. THE CONTRACTOR or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. (N.J.A.C. 17:27-3.4)

Note: A public works contract for a subcontractor with a total work force of four or fewer employees or for a contractor or subcontractor performing under an existing Federally approved or sanctioned affirmative action program shall contain as mandatory language only paragraphs a, b, and c above, and the contract shall not contain any other mandatory language prescribed by N.J.A.C. 17:27. (N.J.A.C. 17:27-3.4) (c)

e. All bidders and all contractors who are negotiating for a procurement or service contract with the public agency which is not subject to a federally approved or sanctioned affirmative action program

are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127), one of the following three documents:

1. Appropriate evidence that the contractor is operating under an existing federally approved or sanctioned affirmative action program; or

2. A certificate of employee information report approval issued in accordance N.J.A.C. 17:27-4; or

3. An initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-4. (N.J.A.C. 17:27-3.3) (a)

f. CONTRACTOR or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time. (N.J.A.C. 17:27-5.3)(a) (1)

g. CONTRACTOR or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, gender identity or expression, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices. (N.J.A.C. 17:27-5.3) (a) (2)

h. CONTRACTOR or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey, and as established by applicable Federal law and applicable Federal court decisions. (N.J.A.C. 17:27-5.3) (a) (3)

i. CONTRACTOR or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions. (N.J.A.C. 17:27-5.3) (a) (4)

j. CONTRACTOR agrees that in the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity, or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates. (N.J.S.A. 10:2-1) (a)

k. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex. (N.J.S.A. 10:2-1) (b)

l. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract. (N.J.S.A. 10:2-1) (c)

m. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract. (N.J.S.A. 10:2-1) (d)

n. The parties of this contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereto, are hereby made a part of this contract and are binding upon them. (N.J.A.C. 13:6-1.1)

o. Contractor and subcontractor agree and guarantee to afford equal opportunity in performance of the contract and, except with respect to affectional or sexual orientation, and gender identity or expression in accordance with an affirmative action program approved by the State Treasurer. (N.J.S.A. 10:5-32 and 10:5-35) (a)

p. The parties of this contract do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., which prohibits discrimination on the basis of disability by public entities in all services programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. The contractor agrees to conduct all activities in compliance with the provisions of Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and the U.S. Department of Labor's regulations at 29 CFR Parts 31, 32 and 34.

Contractor shall cooperate with any state or federal reviews aimed at determining compliance with nondiscrimination laws and regulations authorized by State Law and expressly specified herein.

IN WITNESS WHEREOF, the City of Trenton has caused this agreement to be signed by the Mayor of the City of Trenton and its corporate seal to be hereto affixed, attested by the City Clerk, and Contractor has likewise caused this agreement to be executed the day and year first above written.

CITY OF TRENTON

Attest:   
Brandon L. Garcia, RMC  
Municipal Clerk

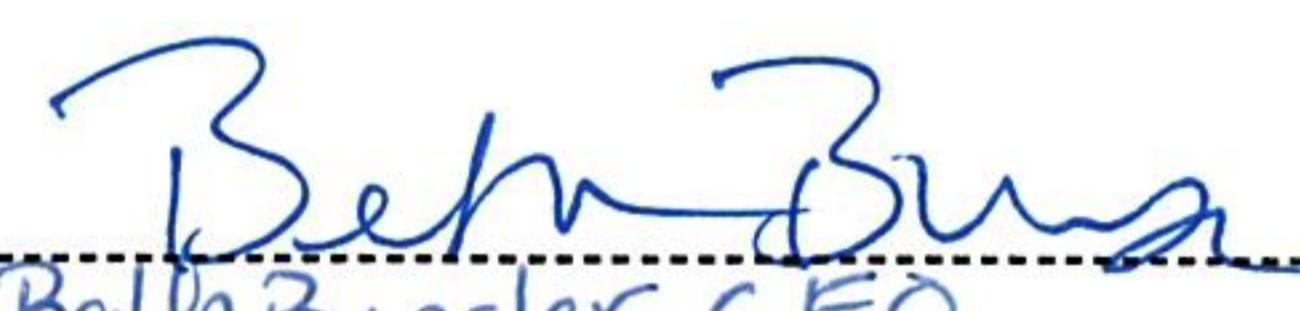
Date

  
W. Reed Gusciora, Esq. Mayor

Date

and

WHITSONS FOOD SERVICE (BRONX), LLC, 1800 MOTOR PARKWAY, ISLANDIA, NEW YORK 11749

  
Beth Bunster, CFO  
CONTRACTOR SIGNATURE

8/4/25

Attest:   
Greg Robbins  
Secretary

  
Paul Whitcomb  
President

DATE

8/4/25

Date

# **NJDA SFSP FOOD SERVICE MANAGEMENT COMPANY INVITATION AND CONTRACT PRICE SCHEDULE**

RECEIVED

APR 23 2025

Sponsor and FSMC agree to abide by all of the provisions contained in this Contract, Attachments A, B, C, D, E, F, and G, as well as all documents included by Sponsor in the IFB, all specifications, and the bid submitted by the FSMC. The

NEW JERSEY DEPARTMENT OF AGRICULTURE  
DIVISION OF FOOD AND NUTRITION

**SUMMER FOOD SERVICE PROGRAM**

**FOOD SERVICE MANAGEMENT COMPANY INVITATION FOR BID AND  
CONTRACT**

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**Attachments**

- A: Sites Where Program Will Operate
- B: USDA Food and Nutrition Service SFSP Meal Pattern
- C: Week 1 and Week 2 Cycle Menus
- D: Summer Food Service Program Food Product Specifications
- E: Transportation Certification
- F: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- G: Certificate of Independent Price Determination

This solicitation is an Invitation for Bid ("IFB") for food services. Sponsor is seeking a Food Service Management Company ("FSMC") to provide unitized meals to be served to children participating in the Summer Food Service Program ("SFSP") authorized by Section 13 of the National School Lunch Act and operated under 7 CFR Part 225. The FSMC must currently be registered with the New Jersey Department of Agriculture ("NJDA") Division of Food and Nutrition.

This document sets forth the requirements, terms, and conditions applicable to the IFB and resulting contract.

**SPONSOR:** City of Trenton  
Legal Name of Sponsor

**FSMC:** \_\_\_\_\_ ("Contractor")  
Legal Name of FSMC

#### SECTION A - INSTRUCTIONS TO BIDDERS

##### 1. Definitions

As used herein:

- A. The term "bid" means the bidder's price offer and response to this Invitation for Bid (IFB).
- B. The term "bidder" means a food service management company submitting a bid in response to this IFB.
- C. The term "contractor" means a successful bidder who is awarded a contract by an SFSP sponsor.
- D. The term "food service management company" means any commercial enterprise or public or private nonprofit organization which contracts with a sponsor to prepare unitized meals, with or without milk, for use in the SFSP or to manage a sponsor's food service operations in accordance with the SFSP regulations.
- E. The term "sponsor" means a service institution which operates a meal service program under the SFSP.
- F. The term "unitized meal" means an individual proportioned meal consisting of a single serving of a combination of foods meeting the SFSP meal pattern requirements. Milk and/or juice may be unitized with other components or be delivered in bulk. NJDA may approve exceptions to the unitized meal requirements for certain components of a meal, such as separate hot and cold packs.

##### 2. Submission of Bids

- A. Bidders are expected to carefully examine the specifications, schedules, and attachments herein and to inform themselves as to all terms, conditions, and requirements before submitting bids. Failure to do so will be at the bidder's own risk and relief cannot be secured on the pleas of error. Neither law nor regulations make allowance for error either of omission or commission on the part of the bidders. In the case of error in estimated total prices in the bid, the unit price shall govern.
- B. Bids must be executed and submitted in duplicate. Erasures on all copies must be initialed by the bidder prior to submission. Failure to do so may result in rejection of the bid. Changes to the IFB are not allowed. The bid must be securely sealed in a suitable envelope, addressed to the office issuing the IFB and marked on the outside with the name of the bidder, bid number and date and time of opening. If a bid is selected, this IFB and accompanying documents along with the bid will become the contract.
- C. Bids over \$100,000 must be accompanied by a bid bond in an amount equal to the percentage of the total amount of the bid as specified on the Invitation for Bid Price Schedule, section E below. The bid bond must be from a surety company listed in the current U.S. Department of Treasury Circular 570. No other form of bid bond is acceptable (cash, letter of credit, trust account, land, etc.). Bid bonds will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids and (b) to the successful bidder upon execution of the contract and receipt of a performance bond.
- D. A copy of a current State of New Jersey health and sanitation inspection report for the bidder FSMC's food preparation facilities shall be submitted with the bid.
- E. A sample lunch that meets the minimum requirements stated herein (unitized with or without milk) shall be submitted with the bid.
- F. A copy of the bidder's registration letter issued by NJDA shall be submitted with the bid.

Failure to comply with any of the above requirements shall be reason for rejection of the bid.

##### 3. Explanation to Bidders

Any explanation desired by a bidder regarding the meaning or interpretation of the IFB specifications and requirements must be requested in writing prior to the bid opening and with enough time allowed for a written reply to reach all bidders before the bid opening. Any information given to a prospective bidder concerning the IFB will be provided to all prospective bidders as an amendment to the IFB if such information is necessary to bidders in submitting bids on the IFB or if the lack of such information would be prejudicial to uninformed bidders.

4. Bidders Having Interest in More Than One Bid

If more than one bid is submitted by any one person, by or in the name of a clerk, partner, or other person, all such bids shall be rejected.

5. Pricing

Pricing shall be based on the cycle menus provided by the sponsor and described in Attachment C, attached hereto, and incorporated into this Agreement. Deviation from the sponsor's cycle menu shall be permitted only upon written authorization by the sponsor. The bid price per meal must include the price of food components, including milk and/or juice if a part of the unitized meal, packaging, transportation, and all other related costs (e.g., condiments, utensils, etc.).

6. Estimated Number of Servings Per Day

The number of servings per day are the best-known estimates for meal requirements during the operating period. The sponsor does not guarantee orders for the estimated quantities and reserves the right to order meals in an amount more or less than that estimated at the beginning of the operating period. The maximum number of meals will be determined based on the approved level of meal service designated by the administering office of each site serving meals provided by the contractor. The contractor will be paid at the agreed upon unit price per meal rate for all meals delivered in accordance with this contract and the SFSP regulations.

7. Time for Receiving Bids

Sealed bids shall be deposited at the sponsor's address no later than the exact time and date indicated in this IFB. Bids received prior to the time of opening will be securely kept, unopened.

8. Evaluation of Bids/Award of Contract

- A. The contract will be awarded to that responsible bidder whose bid conforms to all the terms, conditions, and requirements of the IFB and is the lowest total estimated amount.
- B. The sponsor reserves the right to reject non-conforming bids and to waive informalities and minor irregularities in bids received.
- C. The sponsor reserves the right to reject the bid of a bidder who previously failed to perform properly, or complete on time, contracts of a similar nature, or the bid of a bidder who investigation shows is not able to perform the contract.

9. Late Bids, Modifications of Bids and Withdrawal of Bids

- A. Any bid received after the exact time specified for receipt of bids will not be considered.
- B. Any modification of the IFB will not be accepted. A bid may be withdrawn prior to the exact time set for receipt of bids by telegram or in person by a bidder or an authorized representative, provided his or her identity is made known, and he or she signs a receipt for the bid.
- C. A late modification of a successful bid which makes its terms more favorable to the sponsor will be considered at any time it is received and may be accepted.

10. Final Contract

The final contract shall consist of the terms and conditions in sections A through D herein, along with Attachments A, B, C, D, E, F, and G, as well as all documents included by Sponsor in the IFB, and the bid submitted by the FSMC. No additional modifications or amendments may be made without prior NJDA approval.

**SECTION B - SCOPE OF SERVICES**

1. Contractor shall provide to Sponsor unitized meals, with or without milk or juice, and to deliver the meals to the locations specified on Attachment A, attached hereto, and incorporated into this contract, subject to the terms and conditions of this solicitation.
2. All meals furnished must meet or exceed the United States Department of Agriculture ("USDA") meal pattern requirements set out in Attachment B, attached hereto, and incorporated into this contract.
3. Contractor shall furnish meals as ordered by Sponsor during the period of operation specified on Attachment A.

**SECTION C- GENERAL CONDITIONS**

1. Term of Contract

This contract shall be for a period of 2 months as listed below. Sponsor may enter into a contract renewal with Contractor for up to four (4) consecutive SFSP operational periods with mutual agreement of Sponsor and Contractor.

**Start date: June 30, 2025**

**End date: August 22, 2025**

2. Unit Prices per Meal

The unit prices per meal, as reflected in section D below, are fixed for the term of this contract. Any price change included as part of a contract renewal shall be based upon the price of the original contract as cumulatively adjusted prior to any previous adjustment or renewal, and shall not exceed:

For SFAs: the change in the Index Rate (as defined in Public Schools Contract Law, N.J.S.A. 18A:18A-1et seq.) for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed.

For non SFAs: the price adjustment percentage rate allowable using the CPI index found at [www.bls.gov/cpi](http://www.bls.gov/cpi).

3. Meal Orders

Sponsor will order meals on Monday of the week preceding the week of delivery. Orders will be placed for the total number of operating days in the succeeding week and will include breakdown totals for each site and each type of meal. Sponsor reserves the right to increase or decrease the number of meals ordered on a 48-hour notice, or less if mutually agreed upon between Sponsor and Contractor.

4. Meal-Cycle Change Procedures

Contractor will deliver meals daily in accordance with the cycle menu which appears on Schedule C. Menu changes may be made only when agreed upon by both parties. When an emergency exists which might prevent Contractor from delivering a specified meal component, Sponsor shall be notified immediately so substitutions can be agreed upon. Sponsor reserves the right to suggest menu changes within the agreed upon cost per meal stated in section D below periodically throughout the contract period.

Field Trips

Sponsor, FSMC, Contractor or Food Service Vendor will establish procedures and timelines for reporting any site activity that will affect the regular delivery of meals. Trip schedules will be communicated to the FSMC, Contractor or Food Service Vendor by telephone or email within 24 hours.

5. Noncompliance

Sponsor reserves the right to inspect and determine the quality of food delivered and to reject any meals which do not comply with the requirements and specifications of this contract. Contractor will not be paid for unauthorized menu changes, incomplete meals, rejected meals not delivered within the specified delivery time, and meals rejected because they do not comply with the specifications. Sponsor reserves the right to obtain meals from other sources if meals are rejected due to any of the stated reasons. Contractor will be responsible for any excess cost but will receive no adjustment in the event the meals are procured at a lesser cost. Sponsor or inspecting agency shall notify Contractor in writing as to the number of meals rejected and the reasons for rejection.

The SFSP regulations provide that statistical sampling methods may be used to disallow payments for meals which are not served in compliance with program regulations. If disallowances are made based on statistical sampling, Sponsor and Contractor will be notified in writing by NJDA as to the number of meals disallowed, the reasons for disallowance, and the methodology of the statistical sampling procedures employed.

6. Health Inspection, Supervisions, and Inspection of Facility

- A. Contractor shall supervise at its places of business the preparation and assembly of meals and to conduct quality control inspections to check portions, size, and appearance of packaging as well as quality of the product.
- B. Contractor recognizes the right of a representative of Sponsor, NJDA and/or representatives of the USDA to inspect Contractor's food service facilities at any time during the contract period. Such inspection may proceed with or without notice to Contractor.
- C. Contractor shall have a current State or local health certification for the facility in which it will prepare meals for the SFSP. Contractor shall provide for meals which it prepares to be inspected periodically by the local health department or an independent agency to determine bacterial levels in the meals being served and for the results of the inspections to be submitted promptly to Sponsor and NJDA. Bacteria levels found shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other establishments in the locality.

7. Record Keeping

- A. Delivery tickets must be prepared by Contractor at a minimum in three copies: one for Contractor, one for the site personnel, and one for Sponsor. Delivery tickets must be itemized to show the number of meals of each type delivered to each site. Sponsor, or authorized designee, at each site will check the delivery and meals to ensure compliance with the meal specifications and requirements before signing the delivery ticket. Invoices shall be accepted by Sponsor only if the accompanying delivery tickets have been signed by Sponsor's designee at the site.
- B. Contractor shall maintain records including delivery tickets, invoices, receipts, purchase orders, production records or other evidence to support payments and claims.

C. The books and records of Contractor pertaining to this contract shall be available for inspection and audit by representatives of NJDA, USDA, Sponsor and the U.S. General Accounting Office at any reasonable time and place for a period of three years from the date of receipt of final payment from Sponsor or until the final resolution of any outstanding investigations or audits.

8. Method of Payment

A. Contractor shall submit its itemized invoices to Sponsor weekly. Each invoice shall give a detailed breakdown of the number of meals delivered at each site during the preceding period. No payment shall be made unless the required delivery receipts have been signed by Sponsor's site representative.

B. Contractor shall be paid by Sponsor for all meals delivered in accordance with this contract and SFSP regulations. However, neither the USDA nor NJDA assumes any liability for payment of differences between the number of meals delivered by Contractor and the number of meals served by Sponsor that are eligible for reimbursement.

9. Performance Bond Requirement (applicable to contracts over \$100,000)

Contractor shall provide Sponsor with a performance bond in the amount of 10% of the total estimated amount of the bid as specified on the Invitation for Bid Price Schedule, section D below. The bond shall be executed by Contractor and a licensed surety company listed in the current U.S. Department of Treasury Circular 570. The bond shall be furnished not later than ten days following the award of the contract. Upon satisfactory performance of Contractor's contractual obligations and at the expiration of the contract term, Contractor shall be entitled to cancellation of the performance bond.

10. Insurance, Indemnification

Contractor shall procure and maintain the following insurance.

A. Workmen's Compensation in accordance with the laws of the State of New Jersey.

B. Liability coverage for bodily injury, property damage and products liability, including bodily injury and property damage caused by automobiles, with limits of \$500,000 for injury or death of any one person and \$1,500,000 for injury or death of two or more persons in any one accident, \$100,000 property damage and \$200,000 products liability for any single occurrence.

C. Contractor shall indemnify Sponsor and the State of New Jersey against loss or damage including attorney fees and costs of litigation caused by negligent acts of Contractor or of Contractor's agents or employees.

D. Contractor expressly agrees to defend any suit against Sponsor for personal injury, sickness or disease arising out of consumption or use of products purchased from Contractor (as well as suit for loss resulting from pilferage by Contractor's employees). Sponsor shall promptly notify Contractor and NJDA in writing of any claims against either Contractor or Sponsor, and if suit has been filed, shall forward to Contractor and NJDA all papers received in connection therewith. Sponsor shall not incur expense or enter into settlement without Contractor's consent, provided however, that if Contractor shall refuse or fail to defend, Sponsor may defend, adjust, or settle any such claim, and the costs thereby incurred, including reasonable attorney fees, will be charged to Contractor.

11. Availability of Funds

This contract is expressly made contingent upon adequate funding from Federal, state, and local sources. In the event adequate funding is not available, and Sponsor is unable to satisfy its financial obligation hereunder, Sponsor shall have the option to terminate this contract upon five days written notice to Contractor.

12. Emergencies

A. In the event of unforeseen emergency circumstances, Contractor shall immediately notify Sponsor by telephone or fax of the following: (1) the impossibility of on-time delivery; (2) the circumstances precluding delivery; and (3) a statement of whether future deliveries will be affected. No payments will be made for deliveries made later than two hours after the specified start time for lunch and one hour after the specified start time began for breakfast and supplement.

B. Emergency circumstances at the site precluding utilization of meals are the responsibility of Sponsor. Sponsor may cancel orders provided Contractor is contacted by 7:00 a.m. on the day of delivery or in time to "hold" or "recall" delivery if mutually agreed upon between Sponsor and Contractor.

C. Adjustments for emergency situations that affect Contractor's ability to deliver meals, or Sponsor's ability to utilize meals, for periods longer than 24 hours will be mutually worked out between Contractor and Sponsor.

13. Termination

A. Sponsor reserves the right to terminate this contract if Contractor fails to comply with any of the requirements of this contract. Sponsor shall notify Contractor and surety company, if applicable, of specific instances of noncompliance in writing. In instances where Contractor has been notified of noncompliance with the terms of the contract and has not taken immediate corrective action, Sponsor shall have the right, upon written notice, of the immediate termination of the contract. Contractor or surety company, if applicable, shall be liable for any damages incurred by Sponsor.

- B. Sponsor may, by written notice to Contractor, terminate the right of Contractor to proceed under this contract, if it is determined by Sponsor that gratuities, in the form of entertainment, gifts or otherwise were offered or given by Contractor to any officer or employee of Sponsor with a view toward securing a contract or securing favorable treatment with respect to the award or renewal of the contract.
- C. In the event this contract is terminated as provided in paragraph 13(B) above, Sponsor shall be entitled (i) to pursue the same remedies against Contractor it could pursue in the event of breach of contract by Contractor, and (ii) to a penalty in addition to any other damages in an amount which shall not be less than three nor more than ten times the costs incurred by Contractor in providing any such gratuities to any such officer or employee.
- D. The rights and remedies of Sponsor provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- E. Sponsor may cancel this contract within 72 hours' notice to Contractor and with approval of NJDA for any one or more of the following documented reasons:
  - 1) Sponsor disallows 5 percent (5%) of all meals delivered in one week or ten percent (10%) of any meal type for one week.
  - 2) Contractor fails to deliver any one meal type on any day without enough justification.
  - 3) Ten percent (10%) of Sponsor's sites, over a one-week period, receive meal delivery outside of the approved time.
  - 4) Five percent (5%) of the meals delivered over a one-week period did not follow the approved cycle menu (Attachment C).
  - 5) Any part of this contract was subcontracted to another company for the preparation of the meals.
- F. Contractor may cancel this contract for the following documented reason:
 

An excess of five percent (5%) of the meals delivered over a one-week period were disallowed by NJDA and are attributed to Sponsor's failure to meet its responsibilities under this contract or its agreement with NJDA.
- G. In the event of termination of this contract, Sponsor shall only be responsible to pay Contractor for meals that have already been assembled and delivered in accordance with this contract.

**14. Subcontracts and Assignments**

- A. Contractor shall not subcontract for the total meal, with or without milk, or for the assembly of the meal, and shall not assign, without the advance written consent of Sponsor, this contract, or any interest therein.
- B. In the event of any assignment, Contractor shall remain liable to Sponsor as principal for the performance of all obligations under this contract.
- C. Contractors that prepare and assemble frozen meals designed to be served hot may, with the approval of NJDA, subcontract for the heating and delivery of pre-packaged meals for hot service. The heating and delivery must be performed by the same subcontractor.

**15. Specifications**

- A. Packaging
  - 1) Hot Meal Unit - Package must be suitable for maintaining meals in accordance with local health standards. Container and overlay should have an airtight closure, be of non-toxic material, and be capable of withstanding temperatures of 400 degrees (204 degrees Celsius) or higher.
  - 2) Cold Meal Unit (or Unnecessary to Heat) - Container and overlay to be plastic or paper and non-toxic.
  - 3) Sandwich is to be individually wrapped in addition to the overlay on the container.
  - 4) Cartons - Each carton to be labeled. Label to include:
    - i) Processor's name and address (plant)
    - ii) Item identity, meal type
    - iii) Date of production
    - iv) Quantity of individual units per carton
  - 5) Meals shall be delivered with appropriate nonfood items: condiments, straws for milk, napkins, single service ware, etc. Sponsor shall insert the types of condiments that are necessary for the meals on Attachment C, Week 1, and Week 2 Cycle Menus.

- 6) Individual containers shall be delivered in cartons constructed to prevent damage to the containers inside. An equal number of containers must be in each carton, except one, which may have fewer to allow for the exact number of meals ordered.
- 7) Sponsor may require that Contractor provide means for maintaining adequate temperatures of meals after delivery for a period that covers that meal service (i.e., two hours for lunch, one hour for all other meal types).
- 8) Contractor shall maintain on file for each container the name of the supplier, the telephone number, and a product label specifying ingredients for any food product utilized for meals under this contract. Contractor shall be able to immediately supply this information to Sponsor, NJDA, and/or the New Jersey Department of Health for any meal served at any site listed on Attachment A.
- 9) All components of a cold meal shall be unitized in a container before delivery to a site. The container and overlay shall be plastic, paper, non-toxic metallic or biodegradable material. Milk and/or juice may be enclosed in the unitized container.
- 10) All components of a hot meal shall be unitized in one or two containers before delivery to the site. If two containers are used, one will store the hot portions and one will store the cold portions of the meal. The container and overlay should be an airtight closure and shall be aluminized or non-toxic metallic or biodegradable nonflammable material. Milk may be enclosed in the cold portion container.
- 11) Containers shall have the strength to prevent crushing of food and shall package the meals so that they are completely unexposed to the elements.

B. Delivery

- 1) Meals are to be delivered daily, unloaded, and placed in the designated location by Contractor's personnel at each site listed on Attachment A.
- 2) Contractor shall be responsible for the delivery of meals at the specified time. Adequate refrigeration or heating shall be provided during delivery of all food to ensure the wholesomeness of all food at the time of delivery in accordance with state and/or local health codes.
- 3) Sponsor reserves the right to add or delete food service sites by amendment to the initial list of approved sites on Attachment A and to make changes in the approved level for the maximum number of meals which may be served under the program at each site. Sponsor shall notify Contractor by providing an amendment to Attachment A of all sites which are approved, canceled, or terminated after the acceptance of this contract and of any change in the approved level of meal service for a site. Such amendments shall be provided within 48 hours or less.
- 4) The delivery of more than one meal type per day at any site shall be made separately within one hour of the beginning of meal service for lunch and within one-half hour of the beginning of meal service for breakfast or supplement in accordance with the serving time schedule listed on Attachment A. When site holding facilities have been approved by NJDA, Contractor can deliver two meal types together according to the meal service time for the early meals. When an emergency affects the ability of Contractor to deliver meals separately or of Sponsor to accommodate meals delivered separately, each situation is to be resolved by agreement of Contractor, Sponsor and NJDA.
- 5) Contractor must provide the exact number of meals ordered. Counts of meals will be made by Sponsor at all sites before meals are accepted. Damaged or incomplete meals will not be included when the number of reimbursable meals is determined.
- 6) Contractor shall provide Sponsor with a separate listing of sites to be serviced by each delivery truck one week prior to the first day of meal service.
- 7) Hot and cold portions of meals must be delivered at the same time.
- 8) Cold meals shall be delivered to the site at a maximum temperature of 42 degrees Fahrenheit, but they shall not have a temperature of less than 32 degrees Fahrenheit at the scheduled time for meal service.
- 9) The vehicle and/or carton utilized to deliver cold meals shall have the capability of keeping the product below 42 degrees Fahrenheit until the time of site delivery.
- 10) Hot meals shall be delivered to the site at a temperature of at least 140 degrees Fahrenheit, but they shall not exceed 160 degrees Fahrenheit at the scheduled time for meal service.
- 11) The vehicle or carton utilized to deliver hot meals shall have the capability of keeping the product above 140 degrees Fahrenheit until the time of site delivery.

C. Food Preparation

Meals shall be prepared under properly controlled temperatures and assembled not more than 24 hours prior to delivery.

D. Food Specifications

- 1) All meals must meet the food specifications and quality standards as set forth in Attachment D and conform to the cycle menu cycle on Attachment C.

2) All meat and meat products, except sausage products, shall have been slaughtered, processed, and manufactured in plants inspected under a USDA approved inspection program and bear the appropriate seal. All meat and meat products must be sound, sanitary, and free of objectionable odors or signs of deterioration on delivery.

3) Milk and milk products are defined as: "pasteurized fluid types of flavored or unflavored whole milk, low fat milk, skim milk or cultured buttermilk which meet state and local standards for such milk. All milk should contain vitamins A and D at the levels specified by the Food and Drug Administration and consistent with state and local standards for such milk." Milk delivered hereunder shall conform to these specifications.

16. 7 CFR Part 225, Summer Food Service Program  
 Contractor shall comply with SFSP regulations 7 CFR Part 225, which are incorporated herein by reference.

17. Equal Employment Opportunity  
 Contractor will comply with all applicable federal Equal Employment Opportunity standards and orders under 41 CFR Part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity and Department of Labor and Executive Order 11246, as amended by Executive Order 11375.

18. Contract Work Hours and Safety Standards Act  
 Contractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by U.S. Department of Labor regulations (29 CFR part 5). *[Contracts more than \$2500 that involve employment of mechanics or laborers.]*

19. Environmental Protection/Energy Conservation  
 Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amount in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Act as amended (33 U.S.C 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

20. Byrd Anti-Lobbying Amendment  
 If the amount of this contract exceeds \$100,000, Contractor confirms that it has filed the required certification under 31 U.S.C. 1352, that it has not and will not use federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352.

21. Certificate of Independent Price Determination  
 Contractor and Sponsor have executed a Certificate of Independent Price Determination, attached hereto as Attachment G and incorporated into this Agreement.

#### **SECTION D –INVITATION FOR BID AND CONTRACT PRICE SCHEDULE**

##### **INSTRUCTIONS FOR COMPLETING THE BID PRICE SCHEDULE BELOW**

1. Sponsor shall enter the start date and the end date for the required delivery of meal service under this contract.
2. Sponsor shall fill in the number of anticipated operating days during the contract period for each meal type and quantity shown.
3. Sponsor shall insert the appropriate number of meal servings based on historical data, if available. This shall be done for each meal type. Sponsor may use discretion in choosing the number of meal servings. Sponsor should only choose the amounts which are appropriate for its meal servings.
4. The FSMC bidder (Contractor) shall submit prices on the listed meal types based on the cycle menus set forth in Schedule C in the estimated quantities to be delivered to all the sites listed in Attachment A.
5. The FSMC bidder (Contractor) shall insert the appropriate unit prices in ink or typed for each meal type listed.
6. The FSMC bidder (Contractor) shall calculate the estimated total price for each meal type and the total estimated amount of the bid.